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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 67

WADE GARRETT,

Petitioner,

vs.

MOORE-McCORMACK COMPANY, INC., AND AMERICAN SCANTIC LINE.

BRIEF ON BEHALF OF PETITIONER ON WRIT OF CERTIORARI.

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INDEX.

Subject Index.

	Page
I. The opinions of the courts below	1
II. Jurisdiction	1
III. The statement of the case	2
Common Pleas Court opinion	6
The opinion of the Supreme Court of Pennsylvania	6
IV. Specifications of error	6
V. Argument	7
Summary of argument	7
First Point.—Where the cause of action arises under the maritime law, that law governs all matters of substance to the exclusion of the state law, even though the suit is brought in the state court	8
Second Point.—The amount and character of evidence sufficient to raise a jury issue against the validity of the release is so bound together with the seaman's cause of action that it becomes a matter of substance, necessarily governed by the maritime law as applied in the federal court	10
Third Point.—Under the maritime law, seamen's releases are never conclusive, but are carefully scrutinized by the courts, the burden being upon the party asserting it, to sustain the release as fairly made with and fully comprehended by the seaman, after a full disclosure of all the facts, and without overreaching	18
Fourth Point.—The petitioner produced substantial evidence against the validity of the release, sufficient under the federal law to raise a jury issue and to sustain a verdict in his favor	26
Conclusion	28

Table of Cases Cited.

"Adonis", 38 F. (2d) 743	24
American R. Exp. Co. v. *Levee*, 263 U. S. 19, 68 L. Ed. 140	9, 15
Armit v. *Loveland*, 115 F. (2d) 308	12

Page

Atlantic Coast Line R. Co. v. *Davis*, 279 U. S. 34, 73 L. Ed. 601 11
Atlantic Coast Line R. Co. v. *Driggers*, 279 U. S. 787, 73 L. Ed. 957 11
Bonici v. *Standard Oil Co.*, 103 F. (2d) 437 19
Carlisle Packing Co. v. *Sandanger*, 259 U. S. 255, 66 L. Ed. 927 8
Central Vermont R. Co. v. *White*, 238 U. S. 507, 59 L. Ed. 1433 11
Chelentis v. *Luckenbach S. S. Co.*, 247 U. S. 372, 62 L. Ed. 1171 8
Chesapeake & O. R. Co. v. *DeAtley*, 241 U. S. 310, 60 L. Ed. 1016 ..... 11, 17
Chicago & St. Paul R. R. Co. v. *Coogan*, 271 U. S. 472, 70 L. Ed. 1041 12
Chicago G. W. R. Co. v. *Rambo*, 298 U. S. 99, 80 L. Ed. 1066 11
Davis v. *Wechsler*, 263 U. S. 22, 68 L. Ed. 143 ..... 9, 16
Deemer v. *United Fruit Co.*, 1937 A. M. C. 286 24
Florida v. *Mellon*, 273 U. S. 12, 71 L. Ed. 511 9
Geiston v. *Hoyt*, 3 Wheat. (U. S.) 246, 4 L. Ed. 381 9
Great Northern R. Co. v. *Washington*, 300 U. S. 154, 81 L. Ed. 573 15
Gulf M. & N. R. Co. v. *Wells*, 275 U. S. 455, 72 L. Ed. 370 11
Harmon v. *United States*, 59 F. (2d) 372 24
Hume v. *Moore-McCormack Lines*, 121 F. (2d) 336 19
Lykes Bros. v. *Esteves*, 89 F. (2d) 528 12
Mackay v. *Dillon*, 4 Howard 421, 11 L. Ed. 1038 11
New Orleans N. E. R. Co. v. *Harris*, 247 U. S. 367, 62 L. Ed. 1167 14
St. Louis I. M. & S. R. Co. v. *McWhirter*, 229 U. S. 265, 57 L. Ed. 1179 11
Schlemmer v. *Buffalo R. & P. R. Co.*, 205 U. S. 1, 51 L. Ed. 681 11
Sitchon v. *American Export Lines*, 113 F. (2d) 830 ..... 19, 21
Uravic v. *Jarka Corp.*, 282 U. S. 234, 75 L. Ed. 312 9
Western & Atlantic R. Co. v. *Hughes*, 278 U. S. 496, 73 L. Ed. 473 27

MISCELLANEOUS.

A. L. I. Restatement on Conflict of Laws, Sec. 595 12

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I.

The Opinions of the Courts Below.

The opinion of the Court of Common Pleas No. 5 in the County of Philadelphia (R. 1-11) was rendered under date of April 7, 1941 and is reported in 1941 A. M. C. 817.

The opinion of the Supreme Court of Pennsylvania (R. 12-21) was rendered on January 5, 1942 and is reported in 344 Pa. 69.

II.

Jurisdiction.

This case is within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

The jurisdiction of this Court was invoked by a petition for a writ of certiorari to the Supreme Court of Pennsylvania, which was granted on May 11, 1942.

III.

The Statement of the Case.

This suit was brought by petitioner (Plaintiff below) to recover damages and the cost of his maintenance and cure for certain personal injuries alleged to have been sustained in the course of his employment on respondent's vessel. Respondent defended the action on the merits of the case and in addition thereto pleaded a complete release.

Petitioner has been following the sea for some 22 years holding a certificate of able seaman (R. 21a)[1]. He joined the respondent's steamship "Minnequa" as a deck maintenance man about January 7, 1937 at the rate of $50.00 per month and found, for a foreign voyage from New York to Baltic Ports and return for a period not to exceed one year. Before proceeding with the voyage he was given a physical examination by respondent's physician and pronounced physically fit (R. 22a, 23a).

While the vessel was in the North Atlantic Ocean, enroute to its first port in the Baltic Sea, petitioner in the course of his employment was engaged in washing down the ventilator deck when he slipped on the soapy surface and in falling upon the coaming of the open ventilator his foot struck one of the hinges supporting the ventilator cover, thereby causing the ventilator cover to swing down upon petitioner. The ventilator cover was about 8 feet long by 4 feet wide, weighing about 200 pounds. It was normally supported by hinges secured by cotter pins, but on this occasion the cotter pins were missing and as a result

[1] Note. All references to the record followed by the letter "a" refer to the typewritten record filed with the petition for the writ of certiorari.

when the hinge was struck and loosened from its place there was no support for the ventilator cover. Petitioner having fallen directly beneath it facing upward with his back upon the coaming beneath him attempted unsuccessfully to halt the downward swing of the cover but the weight was too great and he sustained a fracture of the hand and leg and jaw and several of the transverse processes of his vertebrae were fractured by the coaming beneath him. He was treated aboard the vessel with liniment and adhesive tape and put to bed (R. 23a to 27a). The vessel arrived at Gothenburg, the first port of call, where it remained for about six hours, but petitioner remained in his bunk and was not taken ashore for treatment (R. 27a, 28a). At Copenhagen, the second port of call, he was taken ashore to the respondent's doctor who made a physical examination but took no X-rays. The testimony of this doctor was not taken but respondent offered a slip of paper signed by the physician and intended for the master of the vessel stating that the petitioner had an injury to his left hand and right foot and recommended a lay-off from work for three days. The slip further shows that there are no fractures although no X-rays were taken (respondent's Ex. 2, R. 28a). No other report showing the nature of the examination was introduced by the respondent nor was the testimony of this physician taken.

The vessel next called at the Port of Gdynia, Poland, where petitioner was again taken ashore, this time to the hospital where after examination and X-ray he was immediately put to bed. Plaster casts were applied to his hand, leg and face, and he was treated for a fractured back by being placed on fracture boards (R. 30a, 31a, 32a). The record of that hospital, in the Polish language with a translation by an official court interpreter, was offered in evidence by petitioner but was excluded from the record on respondent's objection (R. 31a).

Respondent's agent arranged for petitioner's discharge, from that hospital and his repatriation to the United States on another of its vessels "City of Fairfield" (R. 32a).

Upon his return to New York petitioner was met by respondent's claim agent Mr. Suessmuth who came aboard the ship looking for him and then directed him to go with him to his office on the dock (R. 34a, 35a). Petitioner testified that he claimed the balance of wages due him to the end of the voyage and the claim agent then sent him to the United States Marine Hospital in New York for the purpose of taking X-rays (R. 35a). Petitioner claimed that he had over $100.00 owing to him for wages to the end of the voyage (R. 36a). On that day March 18, 1937, he received an advance of $15.00, the following day $10.00 and on the 23rd of March, he received $3.00 (respondent's ex. 4, 5, 6). The following day he returned in an intoxicated condition after having taken about one-half dozen veronal pills. On this occasion the claim adjuster said to him "If you don't sign here and take your money and go to Chicago I am going to have you put in jail." Petitioner signed the instrument which is now alleged to be a complete release and then was given an envelope to take to the office of the company where he was given $72.00 (R. 37a). Petitioner testified that it was his understanding that the money which he received was in payment of the balance of wages due him to the end of the voyage, that he did not know he was signing a release (R. 37a, 76a, 77a, 78a). This testimony was denied by Mr. Suessmuth, the claim agent, who stated that he had made no threats, that the petitioner was cold sober and that he did not appear to be suffering or discomforted in any way. Petitioner was admitted shortly thereafter to the United States Marine Hospital in New York where he was placed on fracture boards for treatment of the

fractures of the spine and given daily heat treatment and massage. He remained in the hospital for two or three months (R. 38a, 39a). Following his discharge from that hospital he made several short voyages and was then admitted to the United States Marine Hospital in Cleveland, Ohio where it was found that in addition to the injuries previously set forth, he is suffering from tuberculosis. He has since been receiving treatment for his back and for the tubercular condition (R. 41a). No claim has been made for the latter condition. At the trial of the case respondent introduced an X-ray which purported to have been taken in 1935 by the Public Health Service in Philadelphia and which showed fractures of the 3rd and 4th transverse processes. The X-ray plate itself had two different numbers upon it, both in handwriting, and not in the usual printed form and the envelope within which the plate was contained was marked on the outside "Negative". The plate was introduced for the purpose of showing that the petitioner suffered from fractures on the spinal processes before this accident. Petitioner then promptly offered the entire record of the Public Health Service from which the aforementioned X-ray plate had been taken. This record included the report of the government X-ray specialist who had read the plate which was taken in 1935 and whose report showed the plate which he took at that time to be negative for fractures. This offer was objected to by the respondent and the objection was sustained by the Trial Judge so that the X-ray plate went into the evidence without the report of the specialist which was made at the time the original X-ray was taken.

The jury brought in a verdict in favor of the petitioner in the sum of $4000.00. Respondent thereafter filed its motion for judgment non obstante verdicto which was granted by the Court of Common Pleas and subsequently affirmed by the Supreme Court of Pennsylvania.

Common Pleas Court Opinion.

The opinion of the Court of Common Pleas, reported in 1941 A. M. C. 817 (R. 1-11) holds that there is sufficient precedent to sustain petitioner's claims in the admiralty courts. However, the seaman loses his advantage as a "ward of the court" when he brings his suit in any forum other than in the Admiralty Court. Under the law of Pennsylvania the evidence necessary to set aside the release must be "clear, precise and indubitable" before it will be submitted to the jury. The Court holds that since the petitioner had sought the remedy in the State Court he was bound by the law of Pennsylvania, and accordingly, since the Court found that the evidence did not measure up to the Pennsylvania standard, the motion for judgment non obstante verdicto was granted (R. 11). Respondent's motion for a new trial was denied.

The Opinion of the Supreme Court of Pennsylvania.

The opinion of the Supreme Court of Pennsylvania is reported in 344 Pa. 69. It holds that the quantum and quality of proof necessary to set aside the release is a question of evidence and trial procedure which must be determined by the laws of Pennsylvania. Applying the law "clear, precise and indubitable" the Court affirmed the judgment of the Court of Common Pleas in granting motion for judgment non obstante verdicto.

IV.

Specifications of Error.

The Supreme Court of Pennsylvania erred in the following respects:

1. In holding that the kind and amount of evidence necessary to raise a jury issue against the validity of the sea-

man's release is merely a rule of evidence or trial procedure, governed by the law of Pennsylvania.

2. In holding that the evidence against the validity of the release was not sufficient to raise a jury issue, not being clear, precise and indubitable.

3. In affirming the judgment non obstante verdicto, because:

(a) The petitioner produced substantial evidence against the validity of the release;

(b) The amount and character of evidence in a maritime cause of action sufficient to justify submission of the case to the jury is not to be determined by the local state law, but by the maritime law as applied by the Federal Courts—a jury's verdict should not be set aside where the plaintiff's case is supported by subtantial evidence;

(c) The credibility of the witnesses and the weight of the evidence was for the jury;

(d) Under the maritime law as applied by the Federal Courts, it was the defendant's burden to sustain the validity of the seaman's release.

V.

ARGUMENT.

Summary of Argument.

The petitioner makes the following contentions:

1. Where the cause of action arises under the Maritime Law, that law governs all matters of substance to the exclusion of the state law even though the suit is brought in the state Court.

2. The amount and character of evidence sufficient to raise a jury issue against the validity of the seaman's release is so bound together with the seaman's cause of action that it becomes a matter of substance, necessarily governed by the maritime law.

3. Under the maritime law, seamen's releases are never conclusive, but are carefully scrutinized by the Courts, the burden being upon the party asserting it, to sustain the release as fairly made with and fully comprehended by the seaman, after a full disclosure of all the facts, and without overreaching.

4. The petitioner produced substantial evidence against the validity of the release, sufficient under the Federal law to raise a jury issue and to sustain a verdict in his favor.

First Point.

Where the Cause of Action Arises Under the Maritime Law, That Law Governs All Matters of Substance to the Exclusion of the State Law, Even Though the Suit Is Brought in the State Court.

Under the laws of the United States, a right sanctioned by the Maritime law may be enforced through any appropriate remedy recognized by the common law, but the rights and liabilities of the parties are measured by the standards of the Maritime law and not by the common law. No state law is valid if it works material prejudice to the characteristic features of the general Maritime law, or interferes with the proper harmony and uniformity of that law in its international and interstate relations. *Chelentis* v. *Luckenbach S. S. Co.*, 247 U. S. 372, 62 L. Ed. 1171; *Carlisle Packing Co.* v. *Sandanger*, 259 U. S. 255, 66 L. Ed. 927.

In its consideration of the problem at hand, the Pennsylvania Supreme Court drew some of its authorities from the field of conflict of laws. While some of the principles drawn from that field may not be inconsistent with the contentions which we urge, we submit, nevertheless, that where the suit is brought in a State Court but based upon a Federal law, there can be no question of conflicts, in the precise legal meaning of that term. The state Court does not apply the Federal law as a matter of comity, but it is compelled to do so as a matter of constitutional necessity. The authority of the United States Government is supreme in its cognizance of all subjects which the constitution has committed to it. *Uravic* v. *Jarka Co.*, 282 U. S. 234, 75 L. Ed. 312: Consequently there can be no conflict of authority, in the sense here given to the term, between a state and a law of the United States in respect of such a matter, the former being always subordinate and the latter paramount. *Florida* v. *Mellon*, 273 U. S. 12, 71 L. Ed. 511; *Gelston* v. *Hoyt*, 3 Wheat. (U. S.) 246, 4 L. Ed. 381.

Nor can any law of the United States be evaded by forms of local practice. *American R. Exp. Co.* v. *Levee*, 263 U. S. 19, 68 L. Ed. 140; *Davis* v. *Wechsler*, 263 U. S. 22, 68 L. Ed. 143.

In the case at bar the Pennsylvania Supreme Court stated that "a state may not require a plaintiff to prove as part of his cause of action under Federal law, more than what constitutes the cause of action as defined by that law" (R. 17). The Court goes on to hold that all matters relating to the quantum and quality of proof and all matters relating to the rules of evidence are rules of procedure and are controlled by the law of the forum (R. 18). In this latter holding, we think the Court below erred as will appear in the following point.

Second Point.

The Amount and Character of Evidence Sufficient to Raise a Jury Issue Against the Validity of the Release Is so Bound Together with the Seaman's Cause of Action that it Becomes a Matter of Substance, Necessarily Governed by the Maritime Law as Applied in the Federal Courts.

The Supreme Court of Pennsylvania held, in effect, that while it is the duty of the state Court, in a seaman's action, to apply the Federal law creating the right of action, that duty does not extend to the question of the sufficiency of the evidence to raise a jury issue against the validity of a release, where such release is interposed as a defense. That, holds the Court, is merely a rule of evidence or trial procedure, to be governed by the law of Pennsylvania, the application of which does not deprive the seaman of any substantive rights under the Maritime law.

The effect of this ruling is to deprive the seaman of his traditional status as a "ward of the admiralty", when he steps out of the admiralty Courts and attempts to enforce his rights through the medium of a common law remedy in a state forum. The consequence of such ruling is that whereas, under the maritime law, the burden of establishing the validity of the release, and the consequent destruction of the seaman's case, is upon the party asserting it, when the seaman proceeds through the Pennsylvania Courts, he may set aside the release only upon evidence which is "clear, precise and indutiable". In the former, the seaman establishes a jury case with no more than substantial evidence against the validity of the release. In the latter, the effect is not only to throw the burden on the seaman, but to make that burden infinitely greater by the nature of the evidence required by the rule. To say that under these circumstances the seaman is deprived of no substantive rights under the federal law is to change the

concept of substantive rights beyond the point of recognition. The question at issue involves not merely a matter of procedure as to the time when and the order in which evidence is to be submitted (*Central Vermont R. Co.* v. *White*, 238 U. S. 507, 59 L. Ed. 1433) but the legal effect of the evidence submitted, upon the seaman's right of recovery.

This Court has held that where a state Court has given to certain evidence the effect of defeating a Federal right, it will exercise its power to examine the evidence, and will reverse where such effect is not warranted under the Federal law:

Schlemmer v. *Buffalo, R. & P. R. Co.*, 205 U. S. 1, 51 L. Ed. 681;

Mackay v. *Dillon*, 4 Howard 421, 11 L. Ed. 1038.

The proposition that the question at issue here involves a matter of substance governed by the Federal law, is firmly established by those decisions of this Court which hold that whether or not the evidence in a case involving a Federal right is sufficient to raise a jury issue, is a Federal question reviewable by this Court:

St. Louis, I. M. & S. R. Co. v. *McWhirter*, 229 U. S. 265, 57 L. Ed. 1179;

Chicago, G. W. R. Co. v. *Rambo*, 298 U. S. 99, 80 L. Ed. 1066;

Atlantic Coast Line R. Co. v. *Davis*, 279 U. S. 34, 35, 73 L. Ed. 601, 602;

Atlantic Coast Line R. Co. v. *Driggers*, 279 U. S. 787, 73 L. Ed. 957;

Gulf, M. & N. R. Co. v. *Wells*, 275 U. S. 455, 72 L. Ed. 370;

Chesapeake & Ohio R. Co. v. *DeAtley*, 241 U. S. 310, 60 L. Ed. 1016, 1021.

Nor does the term "rule of evidence" applied by the Supreme Court of Pennsylvania to the process of measuring the quantum and quality of proof necessary to guide the judge in determining whether an issue of fact for the jury has been presented, change the quality of such process from a rule of substance to a rule of local procedure—the kind or amount of evidence required to establish a federal right is not subject to the control of the several states: *Armit* v. *Loveland*, 115 F. (2d) 308, 313. In *Chicago & St. Paul R. R. Co.* v. *Coogan*, 271 U. S. 472, 474, 70 L. Ed. 1041, this Court said, at page 1043-1044 (L. Ed.):

> "By the Federal Employers' Liability Act, Congress took possession of the field of employers' liability to employees in interstate transportation by rail; and all state laws upon that subject were superseded. (Citing cases.) The rights and obligations of the petitioner depend upon that act and applicable principles of common law as interpreted by the Federal Courts. The employer is liable for injury or death resulting in whole or in part from the negligence specified in the act; and proof of such negligence is essential to recovery. *The kind or amount of evidence required to establish it is not subject to the control of the several states.*" (Italics ours.)

We have argued that the problem at bar is not one of conflicts since the Federal law is paramount. We note in passing however that even in the field of conflict of laws, the Court will apply the law of the place where the cause of action arose, where the remedial and substantive portions of the foreign law are so bound together that the usual procedural law of the forum would seriously alter the effect of the operative facts under the law of the appropriate foreign state. A. L. I. Restatement on Conflict of Laws Section 595; *Lykes Bros. S. S. Co.* v. *Esteves*, 89 F. (2d) 528.

When the burden of proof is concerned with the time when and the order in which evidence is to be submitted it is generally considered to be a matter of procedure, and when it does not interfere with the substantive features of the cause of action, the law of the forum is applicable. On the other hand, where the burden of proof involves the quantum and quality of the evidence already submitted it necessarily affects the substantive rights of the parties and must be considered as a matter of substance not subject to the control of the several states. It is particularly so where the cause of action is based upon some Federal right or law. In *Central Vermont R. Co.* v. *White* (*supra*), the decedent, an employee of the railroad, was killed in a collision and suit was brought under the Federal Act in a state court. Under the state law plaintiff was required not only to prove the negligence of the defendant, but also to show that he himself was free from contributory negligence. The United States courts have uniformly held that as a matter of general law the burden of proving contributory negligence is on the defendant. Error was assigned to the refusal of the Court to apply the state rule concerning the burden of proof. This Court affirmed the judgment of the Court below upon the ground that the burden of proof in connection with the issue before the Court was a matter of substance and was required to be applied in accordance with the Federal law. Said the Court (L. Ed. pages 1436-1437):

> "There can, of course, be no doubt of the general principle that matters respecting the remedy—such as form of the action, sufficiency of the pleadings, rules of evidence, and the statute of limitations—depend upon the law of the place where the suit is brought (M'Niel *v.* Holbrook, 12 Pet. 89, 9 L. Ed. 1011). But matters of substance and procedure must not be confounded because they happen to have the same name.

* * * So, too, as to the burden of proof. As long as the question involves a mere matter of procedure as to the time when and the order in which evidence should be submitted the State Courts can, in those and similar instances, follow their own practice even in the trial of suits arising under the federal law.

"But it is a misnomer to say that the question as to the burden of proof as to contributory negligence is a mere matter of state procedure. For, in Vermont, and in a few other states, proof of plaintiff's freedom from fault is a part of the very substance of his case. He must not only satisfy the jury (1) that he was injured by the negligence of the defendant, but he must go further, and, as a condition of his right to recover, must also show (2) that he was not guilty of contributory negligence. In those states the plaintiff is as much under the necessity of proving one of these facts as the other; and as to neither can it be said that the burden is imposed by a rule of procedure, since it arises out of the general obligation imposed upon every plaintiff, to establish all of the facts necessary to make out his cause of action. * * * Congress, in passing the Federal employers' liability act, evidently intended that the Federal statute should be construed in the light of these and other decisions of the Federal Courts. Such construction of the statute was, in effect, approved in Seaboard Air Line R. Co. *v.* Moore, 228 U. S. 434, 57 L. Ed. 907, 33 Sup. Ct. Rep. 580. There was, therefore, no error in failing to enforce what the defendant calls the Vermont rule of procedure as to the burden of proof."

In *New Orleans & N. E. R. Co,* v. *Harris,* 247 U. S. 367, 62 L. Ed. 1167, an employee of the railroad was injured in the course of his employment and died shortly thereafter. Suit was brought by his mother, as administratrix, under the Federal Employers' Liability Act in a State Court of Mississippi. The judgment in her favor was affirmed by the State Supreme Court. The trial Judge charged the jury in accordance with the so-called "Prima Facie Act"

of Mississippi, which provides that in actions against railroads for damages, proof of injury inflicted by an engine shall be *prima facie* evidence of negligence. Under the Federal law proof of negligence is necessary. This Court held that the proceedings, although brought in a State Court, were governed by the Federal law. Said the court (L. Ed. page 1171):

> "In proceedings brought under the Federal Employers' Liability Act rights and obligations depend upon it and applicable principles of common law *as interpreted and applied in Federal Courts;* and negligence is essential to recovery. (Cases cited.) These established principles and our holding in Central Vermont R. Co. *v.* White, 238 U. S. 507, 511, 512, 59 L. Ed. 1433, 1436, 1437, 35 Sup. Ct. Rep. 865, Ann. Cas. 1916 B, 252 9 N. C. C. A. 265, we think make it clear that the question of burden of proof is a matter of substance, and not subject to control by laws of the several states." (Italics ours.)

Furthermore, a Federal right may not be denied under the guise of the application of a state "rule of evidence". *Great Northern R. Co.* v. *Washington,* 300 U. S. 154, 81 L. Ed. 573.

Nor can a substantive right or defense arising under Federal law be lessened or destroyed by a local rule of practice. In *American Railway Express Co.* v. *Levee,* 263 U. S. 19, 68 L. Ed. 140, suit was brought in a state Court to recover the actual value of property lost in transit by the railroad. A receipt given by the company contained a clause limiting the value of the personal property to $50.00. The state Court in Louisiana applied the law of that state and held that the burden was on the carrier to prove that the loss or damage had been occasioned by accident or uncontrollable events and gave the plaintiff judgment. This Court reversed upon the ground that the limitation of

the receipt was a valid one under the Federal law, which was controlling. Said the Court (L. Ed. p. 143):

> "The law of the United States cannot be evaded by the forms of local practice. * * * The local rule applied as to the burden of proof narrowed the protection that the defendant had secured, and therefore contravened the law."

In *Davis* v. *Wechsler*, 263 U. S. 22, 68 L. Ed. 143, a suit for personal injuries sustained by plaintiff upon the lines of the defendant railroad was brought in the state Court in Missouri. By General Order, suits against carriers, while under Federal control, were required to be brought either in the county of plaintiff's residence or in the county where the cause of action arose. The Director General of Railroads entered an appearance and united a plea to the jurisdiction with a defense of the merits. The state Court held that under the law of Missouri the appearance by defendant waived objection to the venue notwithstanding the General Order. This Court reversing the judgment stated (L. Ed. Page 145):

> "We are of opinion that the judgment must be reversed. Whatever springs the state may set for those who are endeavoring to assert rights that the state confers, the assertion of Federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice. Even if the order went only to the venue, and not to the jurisdiction of the Court, each Director General in turn plainly indicated that he meant to adopt the position of his predecessor, and to insist that the suit was brought in the wrong county. His lawful insistence cannot be evaded by attempting a distinction between his appearance and his substantially contemporaneous adoption of the plea. Indeed, when the law requires him to unite his defense on the merits, which imports an appearance pro hac vice, with his preliminary plea, it is hard to understand how any effect could be attributed to the statement that he

appeared. *The state Courts may deal with that as they think proper in local matters, but they cannot treat it as defeating a plain assertion of Federal right.* The principle is general and necessary. Ward v. Love County, 253 U. S. 17, 22, 64 L. Ed. 751, 758, 40 Sup. Ct. Rep. 419. *If the Constitution and laws of the United States are to be enforced, this Court cannot accept as final the decision of the state tribunal as to what are the facts alleged to give rise to the right or to bar the assertion of it even upon local grounds.* Creswill v. Grand Lodge, K. P. 225 U. S. 246, 56 L. Ed. 1074, 32 Sup. Ct. Rep. 822. This is familiar as to the substantive law, and for the same reasons it is necessary to see that local practice shall not be allowed to put unreasonable obstacles in the way. See American R. Exp. Co. v. Levee, decided this day (263 U. S. 19, ante, 140, 44 Sup. Ct. Rep. 11)". (Italics ours.)

We are concerned here with rights arising out of the maritime law, asserted by a seaman in a state forum. The laws concerning the maritime rights of this class of men can only originate in the maritime law. No state can make any law, either by legislation or by judicial decision, substantially affecting these rights. Under this principle, the kind or amount of evidence required to establish such rights is not subject to the control of the several states. It must necessarily follow that the kind or amount of evidence necessary to defeat such rights is likewise not subject to the control of the states.

The effect of a valid release upon a seaman's action is identical with the effect of assumption of risk upon a railway employee's action under the Federal Employer's Liability Act. Both operate as a complete defense. If the kind and amount of evidence necessary to establish a jury issue respecting the defense of assumption of risk is a Federal question, to be determined according to the Federal law (*Chesapeake & Ohio R. Co.* v. *DeAtley*, 241 U. S. 310, 60 L. Ed. 1016, 1021) no sound reasoning can

lead to the conclusion that the amount and character of evidence necessary to raise a jury issue, concerning the defense of a release to a seaman's action, is a mere matter of trial procedure to be governed by the local law.

Under the ruling of the Pennsylvania Supreme Court, the respondent's defense is enlarged and the seaman's correlative rights are of necessity lessened. Were the law of Pennsylvania such as to constitute a release a complete bar to an action, no matter what the evidence against its validity, the Supreme Court of Pennsylvania could, under the rationale of its decision, completely destroy a Federal right under the guise of a local "rule of evidence."

We are dealing here with a distinct class of people, who have received special protection from the United States Courts and Congress. The usefulness of this group is not local in character, but decidedly national in its scope. The laws respecting these men, therefore, must of necessity follow them wherever their occupation may lead. To allow a state Court under the guise of a local rule of evidence to accomplish indirectly what it is forbidden to do directly would be to circumvent the established rule which prevents any state from substituting its own laws for that of the Maritime law. The effect is to permit the state law to alter the characteristic features of the Maritime law and to destroy its uniformity of application.

We submit that whether the matter involved be "burden of proof" or some "rule of evidence", if, in fact, the substantive rights of the seaman are involved, then it is mandatory on the court enforcing the remedy to apply the Maritime law.

Third Point.

Under the Maritime Law, Seamen's Releases Are Never Conclusive, But Are Carefully Scrutinized By the Courts, the Burden Being Upon the Party Asserting It, To Sus-

tain the Release As Fairly Made With and Fully Comprehended By the Seaman, After a Full Disclosure of All the Facts, and Without Overreaching.

Under the Maritime law the relationship of the Master to the Seaman has been compared with that of guardians to their wards and trustees to their cestuis que trustent. *Bonici* v. *Standard Oil Company of N. J.*, 103 F. (2d) 437. Accordingly, a seaman's release must be carefully scrutinized to determine whether there has been any overreaching and whether the release was obtained fairly, without fraud and with full disclosure of all the facts involved. Contrary to the general rule regarding the setting aside of releases, the burden, under the maritime law, to prove the validity of the release is upon the shipowner. *Bonici* v. *Standard Oil Company of N. J. supra; Sitchon* v. *American Export Lines*, 113 F. (2d) 830; *Hume* v. *Moore-McCormack Lines*, 121 F. (2d) 336.

Under the rule of the admiralty therefore, it is indisputable that the facts in the case at bar presented a question for the jury. The Common Pleas Court below concedes that under the maritime law it would have been required to sustain the verdict instead of granting the judgment n.o.v. (R. 330a).

The Maritime law concerning the validity of seamen's releases is thoroughly treated by the United States Circuit Court of Appeals in the recent case of *Bonici* v. *Standard Oil Co. of N. J.*, 103 F. (2d) 437. In that case it was conceded by all parties that the seaman signed a general release of all claims. The release contained in large red and black type statements that "signing this paper settles, and ends every claim for damages as well as for maintenance and cure and wages." The libellant, the court found, was a person of some education, able to read and write and the

court held and counsel conceded that he knew he was signing a general release. He testified, however, that he did so because the doctor for the respondent told him that there was nothing the matter with his arm and that he would be ready for work in five or ten days. It subsequently developed that the seaman required four months additional care before he could return to work. In affirming the decree of the court below, the court held that while seamen's releases are not wholly invalid, they are jealously scrutinized to see that there has been no overreaching; that one who claims that a seaman has signed away his rights to what in law is due him must be prepared to take the burden of sustaining the release as fairly made with and fully comprehended by the seaman. In reaching this conclusion the court considered the background and circumstances surrounding the occupation of this class of employees as follows (P. 438-439):

> "We think the rule to be applied is that which apparently prevails generally as to seamen's releases in admiralty, namely, that such releases are not wholly invalid, but are jealously scrutinized to see that these 'wards of the admiralty' have not been overreached. The tender consideration of admiralty for these 'favorites' of the Court who are 'a class of persons remarkable for their rashness, thoughtlessness, and improvidence' (Story J., in Brown *v.* Lull, C. C. 4 Fed. Cas. 407, 409, No. 2018) has been emphasized once again in the recent case of Socony Vacuum Oil Co. *v.* Smith, 305 U. S. 424, 59 S. Ct. 262, 83 L. Ed. —, affirming 2 Cir., 96 F. (2d) 98, in holding the common law doctrine of assumption of risk not a defense to a seaman's action for personal injury. See also Calmar Steamship Corp. *v.* Taylor, supra; Cortes *v.* Baltimore Insular Line, 287 U. S. 367, 377, 53 S. Ct. 173, 77 L. Ed. 368; The Osceola, 189 U. S. 158, 23 S. Ct. 483, 47 L. Ed. 760. A classic statement of the rule appears in Mr. Justice Story's opinion in Harden *v.* Gordon, C. C., 11 Fed. Cas. 480 No. 6047, at page 485, where

he states that, while seamen are 'not technically incapable of entering into a valid contract, they are treated in the same manner, as courts of equity are accustomed to treat young heirs, dealing with their expectancies, wards with their guardians, and cestuis que trust with their trustees.' And there he held invalid a stipulation limiting the shipowner's responsibility for medicines and medical care to that furnished by the medicine chest on board ship.

"*Hence,* * * * *'One who claims that a seaman has signed away his rights to what in law is due him must be prepared to take the burden of sustaining the release as fairly made with and fully comprehended by the seaman'* * * *". (Italics ours.)

Certiorari was denied in 60 Sup. Ct. 106. A petition for rehearing was likewise denied, in 60 Sup. Ct. 137.

In *Sitchon* v. *American Export Lines*, 113 F. (2d) 830, the same rule was affirmed. It was contended in that case that the law of New Jersey was applicable and in this connection the Circuit Court of Appeals said (p. 833):

"The law of New Jersey is apparently in accord with the result we have reached, though that fact is really unimportant, where the question is one affecting the rights of a seaman under the maritime law. That question is one which the United States Courts have to answer."

The latest case on the subject is that of *Hume* v. *Moore-McCormack Lines*, (*supra*). In reaffirming the decision in *Bonici* v. *Standard Oil*, (*supra*) the court makes an admirable and pertinent analysis of the background for the rule governing seamen's releases. To begin with the court compares the unequal position of the shipowner with that of the seaman as follows (p. 341):

"'On the one side are gentlemen possessed of wealth, and intent, I mean not unfairly, upon augmenting it, conversant in business, and possessing the means

of calling in the aid of practical and professional knowledge. On the other side is a set of men, generally ignorant and illiterate, notoriously and proverbially reckless and improvident, ill provided with the means of obtaining useful information, and almost ready to sign any instrument that may be proposed to them; and on all accounts requiring protection, even against themselves. Everybody must see where the advantages must lie between parties standing upon such unequal ground, and accordingly these special engagements so introduced into the mariners' contract lean one way, to the disadvantage of the mariners, and to the advantage of their employers, by increasing the duties of the former, and diminishing the obligations of the latter.' "

The court also notes at page 345:

"* * * we should note an intensely practical influence (especially meaningful for us today) sharply manifesting itself in the early 19th century admiralty decisions relating to seamen, which may give us the answer to our question: there is an explicit recognition of the importance of sea-power as an agency of commerce and of national defense."

Finally, considering that this was an action at law, the court again makes note of these "wards of the admiralty" and the special consideration awarded to them (pp. 346, 347):

"At any rate it is permissible to say that the promotion of national defense was one of the important reasons—and one surely pertinent today—which led to the perpetuation of this rule: The liberty of the individual employee to bind himself firmly—absent fraud, coercion or the like—in a contract with his employer, no matter how harsh or unusual its terms, is not to be strictly applied to workers who go to sea. As to such provisions in their contracts, because they are 'wards of admiralty' a distinctive doctrine is applicable; a peculiar burden is cast on the employer.

"The legislative policy has been to extend that unique protection; in order to effectuate the Congressional intention, statutes of that type have been liberally construed to favor the seaman (Bainbridge *v.* Merchants' & Miners' Transp. Co., 287 U. S. 278, 53 S. Ct. 159, 77 L. Ed. 302), who has been called the 'ward of the legislature'. That the legislative policy, in turn, should perhaps affect the judicial attitude, even as to matters not completely within the boundaries of a statute, was suggested by Mr. Justice Holmes, On Circuit, in Johnson *v.* United States, 1 Cir., 163 F. 30, 32, 18 L. R. A., N. S., 1194 (1908), recently cited and quoted with approval in Keifer & Keifer *v.* Reconstruction F. Corp., 306 U. S. 381, 391, note 4, 59 S. Ct. 516, 83 L. Ed. 784, 1939.

"This Court has consistently followed the rule as to protection of seamen as interpreted in our decisions above cited. We shall do so here. On the record now before us, the instant case lacks the differentiating circumstances we found in Sitchon *v.* American Lines, Supra, and sufficiently resembles the facts in Bonici *v.* Standard Oil Co., supra, so that it should not have been decided against appellant on the facts as presented on the motion for summary judgment. Here the seaman had no lawyer nor other competent adviser representing him when he signed the release. *There should be a trial of the issues, on evidence, at which the burden will be on the appellee to sustain the release 'as fairly made with and fully comprehended by the seaman'.* (Harmon *v.* United States, 5 Cir., 59 F. (2d) 372, 373; Bonici *v.* Standard Oil Co., supra.)" (Italics ours.)

By its decision, the Supreme Court of Pennsylvania gave implied sanction to a propostion, advanced by the trial court (R. 330a), thoroughly opposed to the purposes of the Maritime law, namely, that a seaman is a ward of the admiralty only when he asserts his rights through the admiralty courts. That the Federal courts do not countenance any such proposition is amply demonstrated by the

cases of *Sitchon* v. *American Export Lines, supra,* and *Hume* v. *Moore-McCormack Lines, supra,* both of which were actions at law; in the latter case, the seaman was considered not only a ward of the court, but a ward of the legislature as well. It seems obvious to us that the seaman must be considered in the same light in whatever court he chooses to enforce his Maritime rights. His relationship and usefulness to the national economy do not depend upon the court in which he elects to proceed, and his status accordingly must remain consistent in both State and Federal forum.

In discussing the burden of proof under the Maritime law the Pennsylvania Supreme Court implies that there is a conflict of opinion between the various Circuits, particularly referring to the Second and Third Circuits. This is, of course, an erroneous view. An analysis of the decisions shows complete harmony in all the Circuits where the question has been raised. In the case of *Harmon* v. *U. S.* 59 F. (2d) 372, the Circuit Court of Appeals for the Fifth Circuit specifically held that the burden of proof is upon the employer to sustain the validity of the release. The Pennsylvania Supreme Court apparently relies on the decision in the "Adonis" (C. C. A. 3) 38 F. (2d) 743, for its implication of a conflict. We call to the Court's attention the fact that in that case the suit was brought in the admiralty and the facts accordingly were found by the Judge, rather than by a jury. The law as applied to the facts is entirely consistent with the law announced in the other Circuits. Lest there be any doubt concerning the rule in the 3rd Circuit, we refer to the later case of *Deemer* v. *United Fruit Co.*, 1937 A. M. C. 286, wherein Judge Maris, who is presently on the Circuit Court of Appeals for the Third Circuit, then sitting as District Judge said (p. 287):

> "• • • one who sets up a seaman's release has the burden of sustaining it as fairly made with and fully comprehended by the seaman".

It is thus obvious that the rule is the same in the Third Circuit notwithstanding the implication of the court below.

We note, finally, that portion of the opinion of the Supreme Court of Pennsylvania wherein the court compares the subjective process by which a judge sitting in admiralty arrives at the ultimate fact—the effect to be given to a release—and the process by which a judge presiding at law would reach or permit the result to be reached by a jury. There is, says the court, no substantial difference between the two processes (R. 20). The point is important because it appears to have served as one of the theoretical foundations for the court's ultimate conclusion.

We submit that the view of the court below is clearly erroneous. In admiralty, the Trial Court performs two separate and distinct functions, and this it must do under General Admiralty Rule No. 46½. It must first find the facts specially, and must then state separately its conclusions of law thereon. In performing the first function noted above, the Admiralty Court proceeds by a subjective process identical in every respect with the process by which a *jury* arrives at the facts. In performing the second function, the Admiralty Court proceeds exactly as a *judge* presiding over a jury. Whether, therefore, the case be tried in Admiralty, or at law before a judge and jury, becomes important in considering the nature of the subjective process by which a judge permits a given result to be reached. At law, the function of the judge is limited to determining whether or not, as a matter of law, there is sufficient evidence in kind and quality for submission to the finders of fact, the *jury*. In Admiralty, the court performs this function in the same manner in the first instance, and, if it determines that there is sufficient evidence, then submits it to the finder of fact, the *Court* itself, for determination of the ultimate fact. Therefore, to say that a judge at law and a judge in admiralty proceed by the same subjective process in arriving at the ultimate fact—the effect

to be given a release—is clearly erroneous, since the Judge at law is concerned only with questions of law, and not with questions of fact. He performs no function which is the counterpart of the process by which a Court of Admiralty arrives at the ultimate fact, having once determined that the evidence is sufficient for submission to factual scrutiny, and determination. These considerations, we believe, resolve the apparent conflict which seems to exist in some of the Federal Circuits, where opposite results were reached through application of the same legal principles.

Fourth Point.

The Petitioner Produced Substantial Evidence Against the Validity of the Release, Sufficient Under the Maritime Law to Raise a Jury Issue and to Sustain a Verdict In His Favor.

The petitioner's testimony showed that he had taken about one-half dozen veronal pills, the night before, and several more the following morning, prior to the time he signed the release. In addition, at the time he signed it he was intoxicated. Prior to signing the release he had made several demands for wages owed him to the end of the voyage, and the moneys which he received were accepted in payment of these wages. At the time he received the final sum of Seventy-Two Dollars, he was threatened with arrest unless he signed the paper in question. He did not know that he was signing, nor did he intend to sign, a release of all claims for damages. The release which is asserted as a full defense to petitioner's claim purports to release for $100.00 a claim which a jury of twelve men have adjudged to be valued at $4000.00.

There was substantial evidence here of gross over-reaching, of fraud, and of circumstances showing that the re-

lease was not fairly made with and fully comprehended by the seaman. Under the principles announced hereinbefore such evidence was clearly sufficient to raise a jury issue and to support a verdict in favor of the petitioner.

The Supreme Court, at the end of its opinion, stated that if it had concluded that judgment should be reversed on the plaintiff's appeal, it would not have directed the judgment to be entered on the verdict, but would have been required, by its consideration of the evidence, to have reinstated defendant's motion for a new trial (R. 21).

We submit that under the principles announced by this Court the jury's verdict should not be disturbed. In *Western and Atlantic Railroad Co.* v. *Hughes*, 278 U. S. 496, 73 L. Ed. 473, this Court specifically held that the weight of the evidence and the credibility of the witnesses were for the jury, even though it did not seem persuasive to the court. Said the court (L. Ed. page 475):

> "Some of the testimony given by witnesses for the railroad would, if believed, have entitled it to the verdict as a matter of law. Some of the testimony given by witnesses called by the plaintiff does not seem to us persuasive. But the credibility of the witnesses and the weight of the evidence were obviously matters for the jury. The defendant was not entitled to a directed verdict."

To permit the Supreme Court of Pennsylvania to send this case back for new trial would be in effect to prevent this petitioner from ever vindicating his maritime rights. For the evidence to sustain them on any subsequent trial must be substantially the same as it was on the first trial. Consequently, the Supreme Court of Pennsylvania could send the case back for retrial *ad infinitum*, and thus effectively deprive petitioner of his right to a trial by jury.

Conclusion.

The Supreme Court of Pennsylvania has rendered a decision upon a Federal question of substance in conflict with established decisions of this Court and of numerous Circuit Courts of Appeal. The decision would alter the characteristic features of the maritime law and would destroy its uniformity of application.

WHEREFORE, it is respectfully submitted that the judgment of the court below should be reversed and the verdict reinstated.

Respectfully submitted,

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